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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,876	02/12/2002	Wolfgang Ruf	P21902	2423

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EXAMINER

FORTUNA, JOSE A

ART UNIT PAPER NUMBER

1731

DATE MAILED: 10/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/072,876

Applicant(s)

Ruf et al.

Examiner

José A. Fortuna

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 14, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Feb 12, 2002 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 10 and 10.1 are not shown in figure 2, as mentioned in page 10, line 9. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: in page 9, line 3 the upper nozzle wall and lower nozzle wall have reference as numeral 13.1 and 13.2; however the figures and page 13, shows that the numbers are reversed, i.e., 13.1 corresponds to the lower nozzle wall and 13.2 corresponds to the upper one.

Appropriate correction is required.

Claim Objections

3. Claims 48-50 are objected to because of the following informalities: the claims should be type written as required by 37 C. F. R. 1.52 §4: (iv) Plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent. Appropriate correction is required.

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Claim Rejections - 35 U.S.C. § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-50 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification is not clear as to what are the “structure” which the first and second surfaces are provided with. The specification does not provide any guidance as to what those structures are or the purpose(s)/function (s) of those structures in the lamella.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 22, 44 and 48-50 are unclear as to the meaning of the “structure” on the surface(s) of the lamella.

In Claims 9-10 and 29-30 the word “predominant” renders the claims indefinite since the metes and bounds of patent protection desired can not be ascertained.

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Claim Rejections - 35 U.S.C. § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 11-12, 15, 17-23, 31-32, 34, 37-42, 44, 46 and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruf et al., US Patent No. 5,645,689.

Ruf et al. teach a Multilayer headbox having at least one lamella disposed between a nozzle chamber, see abstract. Ruf et al. teach that the lamella(s) has/have upstream structure and a downstream structure. The downstream portion having first surface, a sloped portion and second surface opposed to the first surface, see figures 5-8. The figures also show the sloped part faces one of the nozzle walls. Ruf et al. teach in column 5, lines 39-44, that the nozzle walls can be provided with a deformable strip, called screen and teach in column 4, that the lamella can be provide with grooves. In column 6, lines 1-62, Ruf et al. teach that the headbox have a sectional consistency control, i.e., dilution water can be introduced to the headbox through sectional pipes. In column 3, lines 60-64, Ruf et al. teach that the lamella can swivel, pivotally mounted, or can be rigidly secured, fixedly mounted.

10. Claims 1-3, 13-15, 18-23, 33-35, 38-44 and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodal et al., US Patent No. 4,617,091.

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Rodal teach a trailing element, lamella, of a Multilayer headbox. The trailing element having an upstream structure and a downstream structure. The downstream portion having first surface, a sloped portion and second surface opposed to the first surface, see figures 1b and 1c. The figures also show the the sloped part faces one of the nozzle walls. The trailing elements can be formed of polymers same as the ones claimed, see column 4, line 66 through column 5, line 6. Also Rodal et al. teach that the trailing elements can be fixedly or pivotally connected, see column 4, lines 6-17.

Claim Rejections - 35 U.S.C. § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Column.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 4-10, 13-14, 16, 24-30, 33-34, 36, 43 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruf et al.

Ruf et al. are silent with respect to the specific of the above claims, i.e., the angle, thickness and size of the lamella, the polymers used to make the lamella. However, it has been held that changing of size and geometric form of a device is within the levels of ordinary skill in the art absent a showing of unexpected results. It has been held that “[C]hanges in size, shape without special functional significance are not patentable. Research Corp. v. Nasco Industries, Inc., 501 F2d 358; 182 USPQ 449 (CA 7), cert. denied 184 USPQ 193; 43 USLW 3359 (1974).

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Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in the art of "Headboxes lamella."


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to José Fortuna, whose telephone number is (703)305-7498. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin, can be reached on (703)308-1164. The fax number for this group is (703)305-7115.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0661.

When filing a FAX in group 1730, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

José A. Fortuna
September 27, 2002


JOSE FORTUNA
PRIMARY EXAMINER
ART UNIT 1731